
Evaluation of the State Authorization Processes for Distance Education

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Abstract

In this article, the process of obtaining state authorizations for distance education at George Mason University is presented. The purpose of the paper is to provide guidance to those four-year public universities that deliver distance education programs. In order to attract students from multiple states, the U.S. Department of Education (USDOE)'s "program integrity issues" announced in Fall 2010 has created some confusion as to how best to maintain compliance. Although changes in the program integrity processes that were required by the USDOE have been placed on hold, state regulations regarding the operation of higher education institutions are still in place. Therefore, George Mason University continues to seek approval from all states in which we have noted online student enrollment. In this study, we present the process of obtaining state authorizations over the last year, including challenges, variability of state authorizations, a status report on Mason compliance processes, and, future plans regarding the state authorization processes. The article is meant to help guide university leaders who must allocate resources wisely in an arena with multiple fixed constraints.

Introduction

Since the announcement of the Higher Education Act (HEA) of 1965, higher education institutes, accreditation agencies, the federal government, and state departments of education have been struggling to efficiently provide federal financial student aid to U.S. citizens. The act is intended to help those who come from low-income families and those from racial or ethnic backgrounds that are underrepresented in institutions of higher education. Over the last four decades, the federal government has focused on accountability of higher education programs so that taxpayer sponsored financial aid is spent wisely. By 2008, HEA had undergone eight reauthorizations. Beginning with Higher Education Amendments in 1992 that expanded financial aid programs, the reauthorization activities have created federal oversight of these funds through the USDOE, regional accreditation agencies, and state review agencies: "the triad" (Hannah, 1996). Each reauthorization of the HEA has intended to overcome identified challenges of managing a growing enterprise. Testing various models including giving authority to individual higher education institutes, accreditation agencies, and state authorities while overseeing the accreditation agencies would seem to be a plausible method for checks and balances on the system. However the growth of the distance education programs in U.S. has created a unique set of challenges that were not thought to be adequately addressed in previous revisions of the Act.

The operations of higher education institutions are not physically limited to state borders any longer.

Distance education is seen by many regulatory agents as well as University administrators as creating disruptive change that could not be accommodated by previous monitoring models. Economic recession, diploma mills, growing unemployment rates, and unpaid student loans have added to the already challenging burden at institutional, federal, and state levels. As a result, the USDOE took on a negotiated rulemaking process to make necessary changes relevant to "program integrity issues" announced in Fall,

2010. The goal of the federal process was to again focus on accountability of institutions receiving funds, as well as success of those students participating in online degree programs.

On Oct 29, 2010 Amendments to the Higher Education Act, Program Integrity Issues, State Authorization, Section §600.9(c) stated that:

“If an institution is offering postsecondary education through distance or correspondence education to students in a State in which it is not physically located or in which it is otherwise subject to State jurisdiction as determined by the State, the institution must meet any State requirements for it to be legally offering postsecondary distance or correspondence education in that State. An institution must be able to document to the Secretary the State’s approval upon request.”

After the announcement, the Association of Private Sector Colleges and Universities (APSCU) filed a lawsuit in January, 2011 based on the fact that USDOE did not follow the appropriate procedures during the negotiated rulemaking process of vetting new regulations. After a number of challenges, the U.S. Department of Education released two “Dear Colleague” letters which provided more clarification and guidance for interpretation of the regulations. In an April, 2011 “Dear Colleague” letter, the USDOE explained that “with regard to State authorization provisions at 34 C.F.R. §600.9(c), the Department would “not initiate any action to establish repayment liabilities or limit student eligibility for distance education activities undertaken before July 1, 2014, so long as the institution is making good faith efforts to identify and obtain necessary State authorizations before that date.” In the same letter evidence of good faith efforts by institutions were detailed as including:

- Documentation that an institution is developing a distance education management process for tracking students’ place of residence when engaged in distance education.
- Documentation that an institution has contacted a State directly to discuss programs the institution is providing to students in that State to determine whether authorization is needed.
- An application to a State, even if it is not yet approved.
- Documentation from a State that an application is pending.

In addition, the USDOE explained that “no action on the part of the institution would be required if a state had no applicable regulation or law.” The USDOE acknowledged the potential issues regarding the States’ changing requirements and application procedures and the cost and effort that may be involved to stay up-to-date with each State’s regulations. Therefore, the USDOE encouraged States, associations, and institutions to share State authorization requirements and processes. The USDOE stated that they “are committed to working with appropriate parties to develop a comprehensive directory of State requirements that provides a meaningful opportunity for States to clearly articulate their specific requirements and for institutions of higher education to easily access the requirements and apply to the State for authorization.” They announced an intention to make state regulations publicly available on the Department’s Website once the directory was developed. Until then, the higher education institutions were to work with other associations and organizations to come up with best strategies to demonstrate the good faith efforts to obtain the state authorizations for distance education.

However, the “Dear Colleague” letters did not change the stance of the Association of Private Sector Colleges and Universities. They continued legal action that resulted in the U.S. District Court for the District of Columbia removing the changes in the regulations on July 12, 2011. Later, the USDOE applied for an appeal of the decision. The U.S. Court of Appeals for the D.C. Circuit agreed on June 5, 2012 in response to the appeal issued by the U.S. Department of Education. The ruling of the Appeals Court provided a sense of relief for higher education institutions as they were not expected to continue seeking state authorizations. However, individual state regulations regarding the need for authorization to “operate” in their states have been in place since the 1960’s. The USDOE process called attention to state governments and triggered most states to review mechanisms for enforcing commerce laws as they pertain to the operations of out-of-state universities offering online programs to their citizens.

The administration of the Office of Distance Education at George Mason University continues to seek authorization for distance education from each state. In addition, Mason has created a system to prepare, send, and track all correspondence with all states and to act on information as it is received. Noting

differences between the expectations of states regarding their approval processes and documenting the challenges during the process has been an ongoing challenge.

The “Request for Information” Letter to the State Departments

In cooperation with the Mason’s office of legal affairs, an official letter was prepared to request procedures for authorization to operate in every state. Letters were sent to all state departments of education. Our team used the “State Approval Regulations for Distance Education: A ‘Starter’ List” for the contact information of the state authorities. The ‘Starter’ List was provided by the partnership of Western Interstate Commission for Higher Education Cooperative for Educational Technologies division, Southern Regional Education Board, American Distance Education Consortium, and the University of Wyoming. Using the list provided Mason with time-saving tool that created allowed certified letters to be sent to the correct recipients.

The Turn Around

In February, 2012, the office of distance education decided to begin the difficult processes involved in navigating approval of distance education offerings in all states. Certified letters were sent to stakeholders in 49 states, American Samoa, the Federal States of Micronesia, and Puerto Rico. Delivery confirmations were received and noted over approximately a one month period. Ironically, our closest neighbor, Washington, D.C., was the last to respond on May 1st, 2012.

Thirty-five states have responded with either approvals or with application requirements although delivery confirmations were received from all states. Initially, 30 states informed us that we are exempt or authorized to deliver distance education in their states. A few states either did not have a corresponding state agency or any specific regulations regarding an approval process (e.g., Arizona, Hawaii and New Mexico). A subset of states had regulations clearly granting exemption based on the lack of a physical presence within their states (e.g., New Jersey, Tennessee, and Texas). The direct costs for the state authorization process so far has been limited to the time spent with legal, printing, mailing, and creating tracking mechanisms.

Over time we have found that some state departments initially contacted as the responsible authority for state are no longer responsible. In addition, some states are changing or have changed their regulations. Some states have not responded to applications for authorizations. Although Mason has documentation of authorization or exemption within some states, we have since learned that these states may have also changed their regulations without informing us.

The Necessity to Create a Comprehensive Distance Education Profile

After our experience in the state authorization process, we believe that it is very important to create a comprehensive distance education profile of the institution before applying for any state authorization. We expect that institutions with a centralized distance education unit will have fewer problems during the state authorization process assuming that information is centralized and available electronically via a website, etc. It is very important to have detailed information regarding distance education programs in your institution including the content covered in each course, the assignments given to students, how course and program assessments are conducted (e.g., with proctors in testing centers located in other states), and the number of students enrolled in each state in fully online programs. Tuition and fees and the student complaint process will be required in most applications. Having a designated person in charge of knowing accreditation and state licensing information sources within the institution is most useful.

Methods used by other states to evaluate operations and whether your institution has a physical presence in their state seem to cluster around factors such as the targeted recruitment of students to the program, where staff hired for each program and course reside and how their responsibilities to the program are defined, how distance education programs are advertised, and the way technology is used to deliver distance education (e.g., server locations and the location of the personnel working for the maintenance of the technology). These and other factors are likely to drive costs and time required to manage the process as changes occur. So far, it has been a long journey and the state authorization process has

prompted Mason to ask questions and learn more about the operations conducted in our own distance education programs.

It is our experience that the authority to contact in each state changes depending on the structure of the distance education operation of the universities that offer programs in that state. Many states have different departments providing authorizations based on the type of the school (public, private, profit (proprietary), non-profit, faith-based, military, technical (vocational), career, charter, tribal) etc.

In addition, the type of the programs delivered through distance education may also change the department to be contacted (health, business, education, etc.). The definition of distance education may vary in each state. For instance, some states focus on the amount of synchronous communication that occurs during each course that constitutes a program and others look for whether students are asked to meet in a particular classroom or on their own individual computers. Therefore, some distance education operations can be exempt in one state while requiring registration and fees in another state. At George Mason University, the first author of the article has been designated as the singular point of contact for the authorization process thus centralizing collection of all necessary information. The second author was the contact person with the states during the process, making decisions about how and when to apply, what fees could be budgeted for, and, which states were necessary in order to continue the strategic growth of online education. As a result of Mason's collaborative nature, we have gained a new understanding each states operations, as well as a better understanding of the structure and function of our own distance education programs.

Distance Education Profile of George Mason University

As of July 2012, George Mason University has 20 fully online undergraduate, graduate, and certificate degree programs in a variety of fields and many other degrees and certificates that are hybrid. Some degrees are fully online Mason degrees while others are part of consortium programs. Mason's RN to BSN in Nursing, MSN with Nurse Educator concentration, Bachelor of Applied Sciences in Technology and Innovation, Executive MBA, MA in Transportation Policy, Operations, and Logistics, MS in Computer Science, MS in Systems Engineering, BS in Information Technology, and four additional fully online programs under development. Consortium programs include the Virginia Consortium for Teacher Preparation in Severe Disabilities, the Consortium for Teacher Preparation in Vision Impairment, and the Commonwealth Graduate Engineering Program. Graduate certificate programs include assistive technology, e-learning graduate certificate, FAST TRAIN Advanced International Baccalaureate Studies, FAST TRAIN Learning Support / Special Education, Integration of Technology in Schools Online Graduate Certificate Program, Assistive Living / Senior Housing Administration, Health Information Systems, Quality Improvement and Outcomes Management in Health Care Systems, and Graduate Certificate in Computer Networking. Mason also have over 100 continuing education courses that are currently offered online as well.

As of Fall, 2012, the number of unique courses offered online exceeded 200, many of which have multiple sections. In Fall 2011, 596 students enrolled in fully online programs. Of these students, 493 students were residents in Virginia, 103 students resided in 25 states and foreign countries. In Spring, 2012 academic year, the number of online students increased to 604 and the number of out-of-state students were still 103 in 25 states in the US and several foreign countries.

Although the number of the states remained the same between two semesters, some of the names of the states changed. For instance, in Fall 2011, GMU had students from Hawaii, Iowa, Montana, New Jersey, and Utah. In Spring 2012, no students enrolled from these states and, instead, there were students from Delaware, Ohio, Oklahoma, West Virginia, and Wyoming.

Our tracking has revealed the dynamic characteristics of our online students even between two semesters. The difficulty of obtaining state authorizations for each student exists regardless of the number of out-of-state students. Our statistics show growth in online programs as is the case in many universities. The continuous growth of enrollments is expected to bring more challenging problems for state authorization process in the future.

In building a tracking process, we reviewed the requirements for clinical experiences, internships, externships, or practicums in all states. Although we have programs that have course components that may require agency work, the courses currently offered have preceptors who are Mason faculty. Agencies are required to be contracted with Mason. Mason also does not own or manage sites that offer instructional or testing in any other state. Mason does have a “pilot” project with a private company to offer web-based proctored testing, and, our policy addressing proctored examinations allows the use of national testing centers and other specific persons based on commonly accepted credentials (i.e. commanding officer).

Further, Mason has a third-party contract with a company that provides educational services to support our executive MBA program that include: (a) course design, (b) student support, and (c) marketing services. Mason is responsible for all content, faculty delivery, and approval of students in the program. Most of the marketing for this program is web-based and does not target any specific state. Further, Mason does not hold any local meetings in other states to advertise programs or to provide other services to potential students.

Mason does participate in education fairs and similar types of conferencing opportunities, primarily for meeting and talking to potential undergraduate students seeking traditional programs. Mason does not hire out-of-state employees to recruit students, although we may have employees who live in surrounding states who telecommute. Mason does not provide targeted marketing in other states for online students although recruitment fairs especially in surrounding states will often be represented by Mason admissions office staff or particular program staff, depending on the venue.

Many courses are offered in an asynchronous format although some require onsite participation in pedagogically important activities. Mason is accredited by the Southern Association of Colleges and Schools, Commission on Colleges in addition to secondary accreditation of other programs as required. Mason monitors the number of out-of-state students enrolled in online programs each semester. Many state authorization processes require answers related to those that have been addressed. It behooves administrative leaders of distance education activities to understand how their institutions balance the need for compliance with a state’s rules to “operate” in that state with the accreditation requirements that govern that organization.

Conclusion

There are two important tasks ahead of us to continue to comply with state requirements related to distance education. The first is to keep a current profile of Mason’s distance education activities and programs. A designated intermediary is required to manage the information and processes all activities and correspondence. The role is needed to coordinate with administrative units including marketing, student services, admissions, institutional assessment, human resources, and administration. Secondly, changing state regulations require a response by Mason and must be understood and managed. Fortunately, the State Higher Education Executive Officers (SHEEO) has formed the Commission on Regulation of Postsecondary Distance Education to address the costs and complexity in the state authorization process. SHEEO’s mission and scope states that “the Commission will make recommendations regarding cost – and inefficiency-reducing strategies and action steps that are designed to preserve and/or enhance the quality of distance education services”.

Along with SHEEO, a State Authorization Network (SAN) has been created by the Western Interstate Commission for Higher Education’s Cooperative Educational Technologies division. According to their invitation letter, the participants in their network will receive extensive background information on the “state authorization” regulations, the latest state regulations, and efforts to rescind or delay this regulation. Participation requires a fee-based membership. Finally, a State Authorization Reciprocity Agreement (SARA) is being developed by the Council of State Governments (CSG) and The Presidents’ Forum. The agreement would allow for reciprocity among state departments of education. If successful, the agreement may change the state authorization processes for public universities.

More recently, the second author and associate provost for distance education has been invited to participate in a special task force of the State Council on Higher Education for Virginia (SCHEV) to

produce Virginia's response to other states seeking approval to offer distance education programs. SCHEV is working with the Southern Regional Education Board (SREB) and SHEEO in building as many cooperative relationships as possible.

In conclusion, there is still much confusion surrounding the authorization process for distance education in the United States and the USDOE enforcement has been delayed for now. Although state authorization processes have been in effect for many years, the growth in distance education has brought new attention to how state institutions operate. The "call" made by the USDOE revealed the decentralized structure of higher education administration in the United States and the relevant challenges as well as opportunities presented.

The call by the USDOE, perhaps, was a reminder to all higher education institutes and state departments of education of their responsibilities to consumers (students). Increasing unemployment and rising student loan debt in the United States has helped kindle action by the federal government. The need for educational programs that allow gainful employment, have high rates of graduation, and help students succeed in life have become talking points for many debates that have been sparked by the advent of distance education.

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